

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

MARCIE MURRAY V. STATE OF TENNESSEE

Appeal from the Criminal Court for Davidson County
No. 94-C-1532 Cheryl A. Blackburn, Judge

No. M2006-00199-CCA-R3-HC -Filed July 27, 2006

This matter is before the Court upon the State's motion to affirm the judgment of the habeas corpus court by memorandum opinion pursuant to Rule 20 of the Rules of the Court of Criminal Appeals. The petitioner has appealed the habeas corpus court's order summarily dismissing the petition for writ of habeas corpus. Upon a review of the record in this case, we are persuaded that the habeas corpus court was correct in summarily dismissing the habeas corpus petition and that this case meets the criteria for affirmance pursuant to Rule 20 of the Rules of the Court of Criminal Appeals. Accordingly, the State's motion is granted and the judgment of the habeas corpus court is affirmed.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Trial Court is Affirmed.

JERRY L. SMITH, J., delivered the opinion of the court, in which DAVID H. WELLES, and ROBERT W. WEDEMEYER, JJ., joined.

Marcie A. Murray, Pro Se, Memphis, Tennessee.

Paul G. Summers, Attorney General & Reporter; David Edward Coenen, Assistant Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

On August 2, 1995, the petitioner and her two co-defendants were convicted by a Davidson County jury of one count of first degree murder and one count of conspiracy to commit first degree murder. State v. James Murray, et. al., No. 01C01-9702-CR-00066, 1998 WL 934578, at *1 (Tenn. Crim. App., at Nashville, Dec. 30, 1998), perm. app. denied, (Tenn. June 28, 1999). The trial court sentenced the petitioner to consecutive sentences of life imprisonment and twenty years. Id. This Court affirmed the trial court's judgments on appeal. Id. Our supreme court denied permission to appeal on June 28, 1999. Id.

The petitioner then filed a petition for post-conviction relief. This petition was denied by the post-conviction court, and the post-conviction court's judgment was affirmed by this Court on appeal. Marcie A. Murray v. State, No. M2002-03098-CCA-R3-PC, 2004 WL 305774 (Tenn. Crim. App., at Nashville, Feb. 18, 2004).

On August 30, 2005, the petitioner filed her petition for writ of habeas corpus with the Davidson County Criminal Court. The habeas corpus court summarily dismissed the petition by order on December 20, 2005. The petitioner now appeals the habeas corpus court's dismissal of her petition for the writ.

Analysis

The determination of whether to grant habeas corpus relief is a question of law. See McLaney v. Bell, 59 S.W.3d 90, 92 (Tenn. 2001). As such, we will review the habeas corpus court's findings de novo without a presumption of correctness. Id. Moreover, it is the petitioner's burden to demonstrate, by a preponderance of the evidence, "that the sentence is void or that the confinement is illegal." Wyatt v. State, 24 S.W.3d 319, 322 (Tenn. 2000).

Article I, section 15 of the Tennessee Constitution guarantees an accused the right to seek habeas corpus relief. See Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999). A writ of habeas corpus is available only when it appears on the face of the judgment or the record that the convicting court was without jurisdiction to convict or sentence the defendant or that the defendant is still imprisoned despite the expiration of his sentence. Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993); Potts v. State, 833 S.W.2d 60, 62 (Tenn. 1992). In other words, habeas corpus relief may be sought only when the judgment is void, not merely voidable. See Taylor, 995 S.W.2d at 83. "A void judgment 'is one in which the judgment is facially invalid because the court lacked jurisdiction or authority to render the judgment or because the defendant's sentence has expired.' We have recognized that a sentence imposed in direct contravention of a statute, for example, is void and illegal." Stephenson v. Carlton, 28 S.W.3d 910, 911 (Tenn. 2000) (quoting Taylor, 955 S.W.2d at 83).

However, if after a review of the habeas petitioner's filings the habeas corpus court determines that the petitioner would not be entitled to relief, then the petition may be summarily dismissed. Tenn. Code Ann. § 29-21-109; State ex rel. Byrd v. Bomar, 381 S.W.2d 280 (Tenn. 1964). Further, a habeas corpus court may summarily dismiss a petition for writ of habeas corpus without the appointment of a lawyer and without an evidentiary hearing if there is nothing on the face of the judgment to indicate that the convictions addressed therein are void. Passarella v. State, 891 S.W.2d 619 (Tenn. Crim. App. 1994), superceded by statute as stated in State v. Steven S. Newman, No. 02C01-9707-CC-00266, 1998 WL 104492, at *1 n.2 (Tenn. Crim. App., at Jackson, Mar. 11, 1998).

The procedural requirements for habeas corpus relief are mandatory and must be scrupulously followed. Hickman v. State, 153 S.W.3d 16, 19-20 (Tenn. 2004); Archer, 851 S.W.2d at 165. For the benefit of individuals such as the petitioner, our legislature has explicitly laid out the formal

requirements for a petition for a writ of habeas corpus at Tennessee Code Annotated section 29-21-107:

(a) Application for the writ shall be made by petition, signed either by the party for whose benefit it is intended, or some person on the petitioner's behalf, and verified by affidavit.

(b) The petition shall state:

(1) That the person in whose behalf the writ is sought, is illegally restrained of liberty, and the person by whom and place where restrained, mentioning the name of such person, if known, and, if unknown, describing the person with as much particularity as practicable;

(2) The cause or pretense of such restraint according to the best information of the applicant, and if it be by virtue of any legal process, a copy thereof shall be annexed, or a satisfactory reason given for its absence;

(3) That the legality of the restraint has not already been adjudged upon a prior proceeding of the same character, to the best of the applicant's knowledge and belief; and

(4) That it is the first application for the writ, or, is a previous application has been made, a copy of the petition and proceedings thereon shall be produced, or satisfactory reasons be given for the failure so to do.

“A habeas corpus court may properly choose to dismiss a petition for failing to comply with the statutory procedural requirements.” Hickman, 153 S.W.3d at 21.

The petitioner's writ of habeas corpus does not meet the mandatory statutory requirements. Initially, the State argues that the petitioner filed her petition in the wrong court. The petitioner is incarcerated at the Mark Luttrell Correctional Center in Memphis. She filed her writ in the Davidson County Criminal Court. Under Tennessee Code Annotated section 29-21-105, “[t]he application should be made to the court or judge most convenient in point of distance to the applicant.” In her petition, the petitioner states that she attempted to file in the Shelby County Circuit Court and her application was returned to her without being filed. She tried again and her application was forwarded to the Shelby County Criminal Court, but her application was again returned without being filed and without explanation. The Davidson County Criminal Court made note of the petitioner's attempts to file in Shelby County and agreed to address her petition on the merits. Since the habeas corpus court decided not to hold the filing location against the petitioner, we will not consider the location of the filing as grounds for dismissal in this particular instance.

In addition, the petitioner failed to state whether the legality of her restraint had already been adjudged upon a prior proceeding of the same character, she failed to attach all her judgments of conviction, and she failed to attach copies of previous petitions for writ of habeas corpus and the judgments relating to those petitions. Tenn. Code Ann. § 29-21-107(b)(2)-(4). The petitioner did not include a statement concerning whether the legality of her restraint had already been adjudged upon a prior proceeding. She did attach the judgment for her first degree murder conviction, but failed to attach a copy of the judgment for her conspiracy to commit first degree murder conviction. In addition, the petitioner failed to attach copies of her previous petitions, regardless of the fact that they were not filed by the Shelby County Courts. The failure to meet these statutory requirements are in and of themselves sufficient reason to dismiss the petitioner's petition for writ of habeas corpus.

In addition to her failure to meet the statutory requirements, the petitioner has failed to show that her judgments are void. Her sole issue included in her petition to the Davidson County Criminal Court is that the trial court did not have subject matter jurisdiction and the prosecution did not prove venue. The petitioner argues that although the victim's body was found in Davidson County, there was no proof to show that he was actually killed in Davidson County. The habeas corpus court stated in its order that the court had subject matter jurisdiction because the case stemmed from an indictment issued by the Davidson County Grand Jury and a witness testified that the body of the victim was recovered in Davidson County. In addition, the habeas corpus court pointed out that the petitioner has had both a direct appeal and a petition for post-conviction relief, and never raised this issue. We find no support for the petitioner's claim that the trial court was without jurisdiction. This issue is without merit.

As far as venue of the trial, as far as we can tell from the record and previous opinions of this Court, the petitioner has not contested the venue of the trial. The habeas corpus court stated in its order, that venue is something that should be contested in the initial pleading. The petitioner approaches the issue as a sufficiency of the evidence question when she argues that the State did not prove that the murder occurred in Davidson County. Sufficiency of the evidence is not a proper issue for habeas corpus. In addition, as we stated above, the petitioner was indicted in Davidson County and the victim's body was found in Davidson County. For this reason, we find no merit as to this issue.

The petitioner has not shown that the convicting courts were without jurisdiction, and she has not shown that she is being held despite the expiration of her sentence. There is nothing in the record or on the face of the judgments to show that the petitioner's petition for writ of habeas corpus should be granted. When there is no cognizable claim, a habeas corpus court may summarily dismiss a petition for writ without the appointment of counsel or holding a hearing. Passarella, 891 S.W.2d at 619.

Therefore, the habeas corpus court was correct in summarily dismissing the petitioner's petition for writ of habeas corpus.

Conclusion

Rule 20 of the Rules of the Court of Criminal Appeals provides:

The Court, with the concurrence of all judges participating in the case, when an opinion would have no precedential value, may affirm the judgment or action of the trial court by memorandum opinion rather than by formal opinion, when:

(1)(a) The judgment is rendered or the action taken in a proceeding before the trial judge without a jury, and such judgment or action is not a determination of guilt, and the evidence does not preponderate against the finding of the trial judge,

We determine that this case meets the criteria of the above-quoted rule and, therefore, we grant the State's motion filed under Rule 20, and we affirm the judgment of the habeas corpus court.

JERRY L. SMITH, JUDGE